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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/604,763	06/26/2000	Tsuyoshi Katayama	2185-0452P-SP	3604

7590 09/17/2003

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EXAMINER

WELLS, LAUREN Q

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 09/17/2003

22

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/604,763

Applicant(s)

KATAYAMA ET AL.

Examiner

Lauren Q Wells

Art Unit

1617

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 September 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 17-29 and 33.

Claim(s) withdrawn from consideration: _____

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____


SREENI PADMANABHAN
PRIMARY EXAMINER

Continuation of 5. does NOT place the application in condition for allowance because: a) Applicant argues, "The emulsifier is not a fatty acid ester and has no relation to a dimerdiol ester". This argument is not persuasive, as the Examiner never stated that the emulsifier of Ansmann was a dimerdiol ester. Applicant argues, "the cosmetic composition of Ansmann is completely different from the cosmetic of Akrongold. . .one of ordinary skill wouldn't be motivated to combine the references". This argument is not persuasive. Both references are cosmetics, wherein fatty acid ester oils are taught as ingredients. Since Ansmann is silent regarding the chain length of the fatty acid one of skill would be motivated to look to Akrongold to teach the chain length for reasons of record. Applicant argues, "it appears that a 'dimer diol' as used in Ansmann is represented by the formula HO-Ar-O-Ar-OH, wherein Ar is ethylene". This argument is not persuasive, as Applicant has made an assumption that has no factual basis. It is respectfully pointed out that Col. 4, lines 48-50, teaches "esters of linear and/or branched fatty acids with polyhydric ~~alcohols~~ (for example dimer diol or trimer diol)". Thus, Ansmann teaches ~~dimerdiol~~ ^{dimer diol} esters of monocarboxylic acids. Applicant refers to Table 1. However, no Table was submitted. For a response to the remainder of Applicant's arguments see the Office Action mailed 6/2/03, Paper No. 19.